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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/842,195      | 04/26/2001  | Anthony Irwin        | TPP 30866A          | 5423             |

7590 02/08/2006  
STEVENS, DAVIS, MILLER & MOSHER, L.L.P.  
Suite 850  
1615 L Street, N.W.  
Washington, DC 20036

| EXAMINER |
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PADEN, CAROLYN A

| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/842,195

**Applicant(s)**

IRWIN ET AL.

**Examiner**

Carolyn A. Paden

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12-13-04 & 7-13-05 & 11-30-05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) ~~3 and~~ 20-23 is/are rejected.
- 7) ☐ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fonteneau (4,597,974).

Fonteneau discloses an edible wine sauce and gravy with a pH of 6.0. The claims appear to differ from Foneneau in the recitation of the intended use of the sauce and in the recitation of the particular sauce set forth in lines 2-4 of the claim. It is well known in the art that bordelaise sauce is a wine sauce. No unobvious or unexpected result is seen from the intended use of the wine sauce and these limitations are not alone seen to carry any patentable weight.

Claim 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hazell (6,395,320) in view of Organesoff (5,942,270) taken with Gum (5,817,356).

Hazell discloses a two-component packaged food product for packaging foods, such as pasta and sauce (column 4, lines 45-60). Thus Hazell is relied upon to show the features of the preamble of claim 21 & 22.

The claims appear to differ from the references in the recitation of the specifics of components a and b. Gum teaches pasta that is acidified to a pH of less than 5, preferably less than 4.6 (column 3, lines 18-24). The Gum reference meets the requirements of component a. Organesoff is relied upon to show treating green beans with ascorbic acid and sodium bicarbonate having a pH of 7.2. This sauce, in this case is the liquid treatment of the green beans that may include spices. Sodium hydroxide is also mentioned as an alkali source at column 1, lines 40-44. The concept of adding additional acidified ingredients to the dish is further suggested in example 3. This reference shows component b. It would have been obvious at the time of applicants' invention to combine the green bean and chicken dish of Organesoff with the acidified rice dish of Gum to provide a nutritionally balanced diet in the prepackaged food of Hazell.

Claims 22 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hazell (6,395,320) in view of Gum (5,817,356) and Fonteneau (4,597,974).

Hazell discloses a two-component packaged food product for packaging foods, such as pasta and sauce (column 4, lines 45-60). Thus Hazell is relied upon to show the features of the preamble of claim 21 & 22.

The claims appear to differ from the references in the recitation of the specifics of components a and b. Gum teaches pasta that is acidified to a pH of less than 5, preferably less than 4.6 (column 3, lines 18-24). The Gum reference meets the requirements of component a. Fonteneau teaches an edible wine sauce and gravy with a pH of 6.0 and meets the requirements of component b. The sauce is used with fish. It is well known in the art that bordelaise sauce is a wine sauce. It would have been obvious at the time of applicants' invention to combine the wine sauce and fish dish of Fonteneau with the acidified rice dish of Gum to provide a nutritionally balanced diet in the prepackaged food of Hazell.

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hazell (6,395,320) in view of Hardman (5,972,408) and Gum (5,817,356).

Hazell discloses a two-component packaged food product for packaging foods, such as pasta and sauce (column 4, lines 45-60). Thus Hazell is relied upon to show the features of the preamble of claim 21 & 22. The claims appear to differ from the references in the recitation of the specifics of components a and b. Gum teaches pasta that is acidified to a pH of less than 5, preferably less than 4.6 (column 3, lines 18-24). Gum

shows component a of claim 22. Hardman teaches a reduced fat sauce. The pH of the sauce is described at column 2, lines 1-6 to vary from a pH of 4.6 to 6.5, preferably from pH of 5.9 to 6.2. The type of sauces contemplated include pesto and Alfredo sauce. This reference shows component b. It would have been obvious to one of ordinary skill in the art to utilize the two component package of Hazell to package the pasta of Gum and sauce of Hardman and prepare a shelf stable food product that contains separate food items preserved at a separate pH. The concept of using the sauce to modify the organoleptic properties of the food is shown in the abstract. The amount of alkali used in the product would have been expected from the pH.


The indication of allowable subject matter suggested in the last office action has been withdrawn in order to permit application to respond to these rejections.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CAROLYN PADEN 2-6-06  
PRIMARY EXAMINER 1761